

**Letter of Findings: 02-20181179
Corporate Income Tax
For the Years 2014 and 2015**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Indiana Service Station failed to meet its statutory burden of establishing that the Department's assessment of additional corporate income tax was wrong; while Service Station provided records purporting to correct errors and omissions embedded in the financial records originally presented to the Department's audit, Service Station failed to provide a documentation which would have allowed for a specific adjustment to the assessment.

ISSUE

I. Corporate Income Tax - Calculation.

Authority: IC § 6-3-1-3.5; IC § 6-3-1-3.5(b); IC § 6-8.1-5-1(c); IC § 6-8.1-5-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department overstated the amount of taxable income attributable to its automobile service station.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation which operates an automobile service station. Taxpayer provides its customers two metered fuel pumps which dispense fuel 24 hours each day. Each of the pumps dispenses regular unleaded gasoline and diesel fuel.

The service station also features three vehicle service bays which make it possible to provide automotive maintenance and repair services. Taxpayer also sells prepackaged snacks and soft drinks.

Taxpayer is registered for Indiana sales, withholding, tire tax, and corporate income tax. The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's business records including sales tax returns, service invoices, and register tapes. According to the Department's audit report, Taxpayer reported its monthly sales and tax due on form Indiana ST-103MP ("Indiana Metered Pump Sales and Use Tax Return").

The Department found "discrepancies between [Taxpayer's] reported sales and the records maintained by [T]axpayer." In completing the ST-103MP forms, "Rather than including the sum of all taxable and non-taxable sales in the total sales in the calculation of the line amount on the ST-103MP form, [T]axpayer only reported the sum of its taxable sales."

[T]axpayer did not keep a full record of its taxable sales calculations that it used to enter the amounts of line one of its ST-103MP forms. Additionally, the amounts for taxable sales on the available daily register tapes did not fully reconcile to the ST-103MP line one amounts. The [T]axpayer's misreported line one amount on its ST-103MP resulted in additional errors on its ST-103MP form, specifically, the understatement of taxable sales.

According to the audit report, Taxpayer's representative admitted that errors were made on the ST-103MP forms and also agreed that "[T]axpayer also misreported the sales tax due because it did not remit all of the sales tax it had collected during the audit period."

In the face of what it determined were basic reporting errors, the Department's audit relied on Taxpayer's "sales

totalizer." The audit report explains that the "sales totalizer" is the line item calculation found on Taxpayer's cash register tapes ("z-tapes"). The audit concluded that these totals "[were] the most reliable method for tracking the [T]axpayer's total revenue during the sample period."

The audit resulted in an assessment of additional sales and corporate income tax.

Taxpayer disagreed with both the sales and income tax assessments and submitted a protest to that effect. This Letter of Findings addresses the assessment of additional corporate income tax.

An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Corporate Income Tax - Calculation.

DISCUSSION

Taxpayer states that the Department's audit overstated the amount of sales which occurred at its business location which led to an erroneous assessment of additional corporate income tax.

The audit report cites to IC § 6-3-1-3.5 as the basis for the income tax assessment. The statute provides in small part:

In the case of corporations, the same as "taxable income" (as defined in Section 63 of the Internal Revenue Code) adjusted as follows:

- (1) Subtract income that is exempt from taxation under this article by the Constitution and statutes of the United States.
- (2) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 170 of the Internal Revenue Code.
- (3) Add an amount equal to any deduction or deductions allowed or allowable pursuant to Section 63 of the Internal Revenue Code for taxes based on or measured by income and levied at the state level by any state of the United States.

IC § 6-3-1-3.5(b).

As with any assessment of tax, it is the Taxpayer's responsibility to establish that the income tax assessment was incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." See also *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

Taxpayer points to two errors or omissions which resulted in overstating the taxable sales.

A. Fuel Sales.

Taxpayer states that it originally misreported the amount of its fuel sales. Taxpayer explains that it inflated the amount of fuel sales on the ST-103MP forms because its fuel pumps recorded and reported both the cost of fuel and the sales tax associated with each sale. For example, the fuel pump system reported \$100 in total sales but that this amount includes both \$7 in sales tax and \$93 in fuel charges. Taxpayer states that it should have reported only the \$93 on the ST-103MP but that it erroneously reported \$100 in taxable sales.

Taxpayer provided a worksheet which purports to reconcile this difference and - in effect - reduce the amount of the sales tax now due by approximately \$9,000.

B. Cash Discounts.

Taxpayer states that the audit failed to account for "discounts" allowed for customers who paid cash for their fuel sales. Taxpayer explains that it allowed certain of its customers a previously unrecorded discount for two of its customers who paid cash when they purchased fuel. Taxpayer explains that these particular sales are recorded on its "QuickBooks" records but that the gross fuel sale - with the discount - is reported on its fuel pump sales.

Taxpayer's representative explains:

The gross fuel sale is recorded when the fuel goes through the pump, but [Taxpayer's representative] do not receive the [QuickBooks] as part of [Taxpayer's] monthly compilation, as [T]axpayer did not know how to send . . . this data, so these discounts were not recorded on the [T]axpayer's financials or tax return[s].

Taxpayer provided a worksheet which purports to reconcile the originally reported sales with information derived from Taxpayer's QuickBooks records. As best as can be determined, this reconciliation reduces Taxpayer's total fuel sales by approximately \$8,200.

C. "Bartered Sales."

Taxpayer states that the Department's assessment fails to account for "bartered" fuel sales. Although not specifically addressed in the audit report, Taxpayer states that a certain amount of its fuel is not sold but is provided to a third-party towing company without cost in exchange for services. Taxpayer explains:

Taxpayer also barter[s] with [Towing Company]. [Taxpayer] charges the customer for towing, but instead of paying [Towing Company], the tow truck operators get free fill-ups. The fuel is recorded as a sale, sales tax is paid, and the towing is recorded as labor income. The income is counted twice, but no expense has been recognized.

Taxpayer concludes that its original records failed to recognize approximately \$6,300 in expenses.

D. Alignment Services.

Taxpayer argues that its original records failed to account for expenses associated with the cost of providing automobile alignment services. Taxpayer explains that although it provides these services to its customers, it outsources the actual work to an unrelated service station because it does not own its own alignment rack. Taxpayer explains:

Customers paid [T]axpayer for alignments. These were charged as labor, but [T]axpayer does not have an alignment rack. [Taxpayer] would take the cars to [Third-Party Service Station] and pay cash to the owner. [Taxpayer's] thought was that he would get preferential treatment as a cash paying customer. [Taxpayer] also failed to get receipts from [Third-Party Service Station].

Taxpayer concludes that its original records failed to recognize approximately \$1,500 in expenses associated with providing the alignment services.

E. Conclusion.

Taxpayer's three-page spreadsheet sets out the requested adjustments Taxpayer now seeks. However, the Department is unable to agree that the spreadsheet, written explanations, and, financial statements are sufficient to meet Taxpayer's statutory burden of establishing that the assessment was *wrong*. IC § 6-8.1-5-1(c). Although Taxpayer provided financial records purporting to correct the multiple errors and omissions embedded in the records originally reviewed, there are no verifiable source documents which allow for a specific adjustment of the original income tax assessment as required under IC § 6-8.1-5-4(a).

FINDING

Taxpayer's protest is respectfully denied.

May 17, 2018

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